IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.55 OF 2003

AGAINST

WRIT PETITION NO.7477 OF 2002

Gurudassing Nawoosing Panjwani
Indian Inhabitant Aged about 65 years
Residing at Golden House,
Hill View Apartment, Section 17,
Near Ekta Apartment,
Ulhasnagar-3,
Dist: Thane. ..Applicant

Versus

1. The State of Maharashtra
   Through Revenue Minister,
   Mantralaya, Mumbai.

2. Shri Prem Hasmatraj Lalwani
   Indian Inhabitant, Hindu, Adult,
   R/at.102, Gajdhar Apartments,
   Juhutara Road,
   Vile Parle (West)

3. Smt. Gulabai Gajanan Desai

4. Shri Anil Gajanan Desai

   (Respondent Nos.3 and 4 dead)

5. Shri Genu Baburao Kadu,
   Indian Inhabitant, Hindu, Adult,
   R/at. Lonavala, Tal. Maval,
   Dist. Pune.

6. The Addl. Collector &
   The Custodian of Evacuee Properties,
   Pune.

..Respondents

Mr.P.K.Dhakephalkar i/b.Shri A.S.Rao for the appellant

Mr.Anil V. Anturkar for the respondent No.2

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 13th July, 2005

ORAL JUDGMENT (PER S.B.MHASE, J)

1. This Letter Patents Appeal is directed against the Judgment and Order passed by the learned Single Judge of this Court on 24th April, 2003 in Writ Petition No.7477 of 2002. By the said judgment and order the Single Judge dismissed the said Writ Petition and thereby confirmed the orders passed by the State Minister for Revenue in the proceeding R.T.S.3402/Pra.kra.309/L-6 dated 18th October, 2002.

2. The facts leading to this LPA are as follows:

. Survey Nos.118, 328 and 351 of Lonavala were originally owned by one Haji Habib Tar Mohammed Janu. The said Haji Habib Tar Mohammed Janu migrated to Pakistan and while going to Pakistan, said Haji Habib Tar Mohammed Janu sold his property to one Smt. Hajrabi Haji Yusuf on 4.6.1949. However, this transaction was cancelled by the Collector and Custodian of Evacuee Property on 17.4.1949 as per Section 8(i) of the Evacuee Properties Act and these

lands were accordingly entered as Evacuee Property by the Tahsildar, Maval on 26.10.1949. It appears that these survey numbers were also given C.T.S.No. 129, 130-A, 130-B and 133. It appears that in CTS No.129, 130-A, 130-B and 133, apart from vacant land there is a bungalow No.52- Habib Villa. It appears that the Regional Settlement Commissioner placed this property for auction through Government Auctioner and the Respondent No.3 Gulabai purchased the said property in auction for consideration of Rs.16,750/- on 17.5.1956 and accordingly sale certificate was issued by the Regional Settlement Commissioner, Bombay on behalf of the Government. In the said sale certificate the C.T.S. No 129, 130-A, 130-B and 133 of Village Lonavala were mentioned. The area of this CTS Nos. were / are as under:

129	-	55.16 sq.mts.
130A	-	1651.1 sq.mts.
130B	-	2934.02 sq.mts
133	-	3237.00 sq.mts
Total		7897.21 sq.mts.

. On the basis of the said sale certificate the

mutation Entry No.1836 was effected in the village record in favour of Gulabai Desai, Respondent No.3 and thereby the name of Respondent No.3 was entered to Survey Nos.118/1B and 328 of village Lonavala to the extent of 29.30 Ares and 70 Ares respectively. Thereafter, the Respondent No.3 Gulabai sold CTS No.133 admeasuring 33 Gunthas on 24.4.1977 to Respondent No.5 Genu Kadu. The said Gulabai also gifted her remaining area from this Survey numbers to her grandson Anil Gajanan Desai- Respondent No.4 on 15.1.1979 and in turn, thereafter, the Respondent No.4 Anil has sold his properties to Respondent No.2 in the year 1980. Thus, on the basis of the mutation entry No.1836 and auction certificate the above referred transactions have taken place in between the Respondents.

3. The Survey Nos.118/2 and 351 since were Evacuee Properties, were allotted to the Appellant in the year 1956. Later on, it was found that the Appellant is in possession of more area and therefore the said order was modified on 6.5.1982 and excess area was granted to the Appellant on payment of Rs.31,360/-, which Appellant had paid on 17.5.1982 in Government Treasury and thereby the Deputy Collector and Assistant Settlement Commissioner, Pune granted the excess land to Appellant and thereafter the dispute started between

the parties. It is made clear that the dispute between the parties is in respect of the area, as to what has been purchased in auction sale by the Respondent No.3 Gulabai Desai and what is the area allotted to the Appellant by the orders of the Deputy Collector and Deputy Custodian of Evacuee Properties. (The Appellant, accordingly has requested this Court not to enter into the merits on this question in this LPA since the parties may prosecute their remedies in the Civil Court for such adjudication, and therefore, that aspect has not been considered in this LPA.) However, in the facts of the conflicting claims, the Appellant made grievance to the Respondent Deputy Collector and the Deputy Custodian of Evacuee Properties in respect of the Mutation made in favour of the Respondent Gulabai and other Respondents and therefore by order dated 18.9.1984 the Deputy Collector and Deputy Custodian of Evacuee Properties, Pune, directed the Sub-Divisional Officer, Haveli Sub Division to take up the case in revision under Section 257 of Maharashtra Land Revenue Code and pass necessary orders. In view of these directions, the Sub-Divisional Officer, Haveli, Sub Division, Pune, initiated proceeding RTS Revision 14 of 1984 and by order dated 30.7.1985 cancelled the mutation entry No.1836 and directed necessary corrections in the record as per the

observations made in the order. It appears that the said order was taken into appeal (number of the same is not available) and the matter was remanded to the Sub Divisional Officer. After remand the Sub Divisional Officer, conducted inquiry and again passed order on 29.10.1987 and confirmed the earlier order. Therefore, the RTS Appeal No.128 of 1987 was preferred before the Collector which was disposed off by the Additional Collector on 13.7.1993. By the said order, the Order of the third Sub-Divisional Officer was maintained. However, further inquiry as directed by the SDO was to be conducted. Since the mutation Entry No.1836 was cancelled by above order, the Talathi gave effect to these orders and effected the mutation entry No.2176 and showed the disputed properties in the name of the Collector and Deputy Custodian of Evacuee Properties. The directions were issued by the Collector to the Tahsildar to place the appellant in possession of the property as per the orders of the Deputy Collector and the Deputy Custodian of Evacuee Properties. However, instead of giving effect to those orders, it appears that the Revenue Officers at Tahsil level effected two mutations, namely the Mutation No.2377 and 2394. By mutation entry No.2377 the name of Gulabai Desai, Respondent No.3 was again mutated in the record and by the mutation entry No.2394 the name of Respondent No.5

Genu Kadu was mutated in the record. Since the Collector noticed on complaint that the orders of the Collector has been bypassed or surpassed by the Subordinate Revenue Officers, the Collector by order dated 12.7.1999 directed the SDO to take these mutations namely the mutation entry No.2377 and 2394 in revision and therefore the Sub-Divisional Officer, Maval Division has taken these mutations in revision bearing RTS Revision No.12 of 1999. The said revision was decided by the Sub Divisional officer at Maval on 28.1.2000 and those mutations were cancelled. Being aggrieved by the order passed in said revision, the Respondent No.1 Lalwani preferred RTS Appeal No.81 of 2000 and the Respondent No.5 Genu Kadu preferred RTS Appeal No.114 of 2000. Both these RTS Appeals were heard by the Additional Collector, Pune and by order dated 28.5.2001 the Addl. Collector, Pune dismissed the said appeals and confirmed the order of the Sub Divisional Officer, Maval. Therefore, being aggrieved by the said order of the Additional Collector, the Respondent No.1 Lalwani preferred RTS Revision No.330 of 2001 invoking the power under Section 257 of Maharashtra Land Revenue Code, 1966 before the Additional Commissioner, Pune Division, Pune. The said revision was decided by the Additional Commissioner, Pune by order dated 22.11.2001 and the said revision

was dismissed.

4. This order of the Additional Commissioner was challenged by the Respondent No.1 Lalwani by filing the proceeding RTS 3402/Pra.kra.309/L-6 before the Revenue Minister for State and the said proceeding was decided by the Minister for State on 18.10.2002. The Revenue Minister for State allowed the said proceeding and set aside the orders passed by the Sub Divisional Officer, Maval on 28.1.2000, the Additional Collector, Pune on 28.5.2001 and Additional Commissioner on 22.11.2001 and thus restored the position as reflected by the Mutation entries Nos.1836 and 2377 and 2394. Thus, all the entries in favour of the Respondents were protected and maintained by the order of the State Minister for Revenue. This order passed by the State Minister for Revenue in RTS 3402/Pra.Kra.309/L-6 was challenged by the appellant by filing the Writ Petition No.7477 of 2002 before the Single Judge of this Court. The said petition was dismissed by order dated 24.4.2003 and therefore the present LPA.

5. By the order dated 6.4.2004 the LPA was admitted and we have heard this LPA finally.

6. The learned Counsel for the Appellant, Mr.

Dhakephalkar, submitted that it is not necessary to scrutinize and decide the main controversy between the Appellant and Respondent in respect of the disputed property. The learned Counsel submitted that all the orders passed by the Revenue Officers from the stage of Sub-Divisional Officer upto the Additional Commissioner are in favour of the Appellant and it is only the order passed by the State Minister for Revenue which is challenged in the Writ Petition in this LPA, is the order against the appellant. He further submitted that if the order passed by the State Minister for Revenue is found to be without jurisdiction and incompetent and thereby if this court set asides said order, the rest of the orders upto the stage of the Additional Commissioner being in favour of the Appellant, those orders will stand and thereby the purpose of the Writ Petition and LPA will be achieved and the grievance of the Petitioner/Applicant will stand redressed. He, therefore, submitted that according to him the Additional Commissioner, when he decided the RTS Revision No.330 of 2001 has exercised the powers under Section 257 of the Maharashtra Land Revenue Code and has dismissed the Revision Application filed by the Respondent No.1. He submitted that it is rather difficult to understand which powers were exercised by the State Minister for Revenue when State Minister has

decided the RTS 3402/Pra.kra/309/L-6. The learned Counsel pointed out that in the initial part of the judgment it is stated that the appeal application is under Section 249 of the Land Revenue Code. He, further demonstrated that in the introductory part of the judgment it is stated that the Respondents have approached under Section 257 of the said Code. The learned Counsel further pointed out that the Minister has relied upon the directions given in Writ Petition No.5590 of 1999 dated 21.10.1999 and has assumed the jurisdiction under Section 257 holding that the Second Revision is permissible. The learned Counsel submitted that thus the Revenue Minister for State has committed error in clubbing the power under Section 257 for Second Revision, and Section 249 which is appellate power of State Government. He submitted that the orders passed in Writ Petition No.5590 of 1999 are absolutely irrelevant, since those are the orders not pertaining to the litigation between the parties and that too whether the second revision is permissible or not is not the issue decided by the High Court in the said Writ Petition. He submitted that under the Land Revenue Code the second revision is not permissible and relied upon the judgment delivered by the Single Judge of this Court in Writ Petition No.4168 of 1998 dated 18.2.1999. The learned Counsel, further, pointed out

that the Letters Patent Appeal No.349 of 2000 preferred against the said Writ Petition was rejected by the Division Bench of this Court at admission stage itself. He, further pointed out that another single Judge of this Court, while admitting the Writ Petition No.2084 of 1999 has prima facie observed that the second revision is not permissible under Section 154 of the Maharashtra Co-operative Societies Act. It is further pointed out that both the orders of the Single Judge have been followed by another Single Judge while deciding the Writ Petition No.735 of 1999 reported in **2000(3) MLJ 115 in the matter of Ramesh T. Gopalani vs. Janata Sahakari Bank** and has concluded that the second revision is not tenable under Section 154. The learned Counsel further invited the attention of this Court to reported Judgement **Sambappa Babappa Teli vs. State** o**f Maharastra & others reported in 2003(4) ALL MR 252** and submitted that the learned Single Judge of Aurangabad Bench has relied upon the cases referred to above and has concluded that the Second Revision under Section 257 of the Land Revenue Code is not permissible. Thus, thrust of his argument is that the State Minister for Revenue has committed error in entertaining and exercising the powers under Section 257 by way of Second Revision and reference to the said provision in the said order does not confer

jurisdiction on him. Making reference to Section 249 of the Code the learned Counsel submitted that the appeal under Section 249 would have been permissible, had the Additional Commissioner being the Revisional Authority, passed an order varying/ reversing the order passed by the Subordinate Revenue Officer. However, he submitted that the Additional Commissioner has dismissed the RTS revenue petition No.330 of 2001 without modification and or variance in the orders of the subordinate Revenue Officers and therefore the assumption of appellate jurisdiction under Section 249 by Minister of Revenue was absolutely illegal. Learned Counsel concluded that the facts and circumstances of the present case the proceedings which were decided by the Minister for Revenue were decided when the Minister had no power and jurisdiction under the Land Revenue Code either under Section 257 and/or under Section 249 and therefore prayed that the impugned orders passed by the State Minister for Revenue and learned Single Judge of this Court be set aside.

7. The learned Counsel for the Appellant further assailed the order passed by the Single Judge of this Court and submitted that the Single Judge of this Court, while passing the impugned order has misread the judgment of the single Judge of this Court passed in

Writ Petition No.4168 of 1998. According to the learned Counsel it has been decided in the said Writ Petition No.4168 of 1998 that the second revision is not tenable. However, in the facts of that case alongwith the Second Revision there was another Revision against order passed by the Sub Divisional Officer which was decided alongwith Second Revision. Therefore, the directions were given by learned Single Judge to decide the said revision which was directed against the order of Sub Divisional Officer. Thus, he submitted that there is improper reading of the judgement of Writ Petition No.4168 of 1998 while passing the impugned order, and therefore the learned Single Judge of this Court erred in confirming the order passed by the Revenue Minister invoking the powers under Section 257 and 249 of the Maharashtra Land Revenue Code.

8. The learned Counsel Mr. Anturkar who appears for the Respondent seriously objected the points raised by the learned Counsel for the Appellant. He submitted that provisions of the Maharashtra Land Revenue Code, pertaining to the appeal, revision and review have not been properly assessed, scrutinized and construed by the single Judges who have decided the cases referred to above. He submitted that the scheme of each Act is

required to be scrutinised in the light of the provisions contained in the said Act, since the appeal, revision and review are the powers and remedies being the creature of law. But he submitted that it is permissible for the legislature to provide the number of appeals and the number of revisions as is found proper in its legislative wisdom. He submitted that the order passed by the Single Judges of this Court, though may be considered by this Court, are not binding on this Court, and this Court shall further proceed to scrutinize the provisions of the Land Revenue Code and find out as to whether more than one revision is possible under the Land Revenue Code. He actually submitted that the order passed in LPA No.349 of 2000 dated 5.2.2001, though passed by Division Bench of this Court, is not binding on this Court because according to him the said order was passed at the stage of admission and thereby it is not the judgment so as to create any binding precedent on this Court. He submitted that only those judgments of the Division Bench which has been delivered finally after admission of the matter, are binding and that too if same question as raised in present matter is finally adjudicated in the earlier matter. The learned Counsel submitted that jurisdiction under Section 257 of Land Revenue Code is concurrent and simultaneous with State

Government and any Revenue or Survey Officer not inferior in rank to the Assistant or Deputy Collector or Superintendent of Land Records in the respective departments and thereby learned Counsel submitted that when it is to be held that the second revision is not possible then the word "and" which appears in between the words "State Government" and "the Revenue or Survey Officer" etc is required to be interpreted as disjunctive and submitted that usual normal rule of interpretation is to interpret the said "and" as conjunctive. The normal rule of interpretation can be only deviated if the absurd result is followed and the interpretation results into giving meaning to said provision against the legislative policy or intention. However, learned Counsel submitted that this is not the case, wherein the word "and" appearing in the Section 257 of the Code shall be interpreted as "or" that is as disjunctive, because according to the learned Counsel the Officers to whom the revisional powers have been given under Section 257 are not equal in ranks and thereby they are not interchangeable in respect of their powers and status and therefore he submitted that Section 257 of the Code shall have to be interpreted as Section 128 of Rajasthan Co-opertive Societies Act was interpreted by the Apex Court in the matter of **Ishwarsingh Vs. State of Rajasthan and Others reported**

in 2005(2) SCC 334. He also submitted that the Single Judge of this Court while deciding Writ Petition No.4168 of 1998 has not analysed the provisions of the Land Revenue Code and has directly observed that the Second Revision is not maintainable and blamed the learned Counsel for the Respondent in that case to the effect that said learned Counsel failed to show the maintainability of such revision. Thus, the learned Counsel emphasized that the scheme of the Act is required to be looked into. He also invited for that purpose, our attention to **Parmeshwar Shiroharan Bohara and Others vs. State of Maharashtra reported in 1992(2) MLJ page 257** and submitted that considering the language of clause 24 of the Maharashtra Schedule Commodities (Regulation of Distribution) Order 1975, the Division Bench of this Court at Nagpur has found that the second revision is permissible under the said order and thereby learned Counsel insisted that in similar manner this Court shall scrutinize the provisions of land Revenue Code and more specifically the provisions of appeal, revision and review and thereafter shall decide as to whether more than one revisions are possible under Section 257 or not. Learned Counsel submitted that according to him more than one revisions are possible under the Land Revenue Code and thus he submitted that the State Minister for

Revenue has rightly entertained the application of the Respondent under Section 257 of the said Code and therefore submitted that the submissions made by the learned Counsel for the Appellant be rejected.

9. Thus, the main question which arises for our consideration is as to whether more than one revisions are possible under Section 257 of the land Revenue Code or not, because the fate of this LPA depends upon the finding on this issue. Namely, if we come to the conclusion that more than one revisions or second revision/s is/are possible then the LPA has to be dismissed. If we come to the conclusion that the Second Revision is not possible then the LPA will have to be allowed and the order passed by the State Minister for Revenue shall have to be set aside.

10. Before we proceed to consider the provisions of the Land Revenue Code, we find it appropriate to consider the judgment of the Apex Court in the matter of Ishwarsingh Vs. State of Rajasthan and Others referred to above and the ratio and test laid down by the Apex Court while interpreting Section 128 of Rajasthan Co-operative Societies Act. The brief facts from the said reported judgment are as follows:

. The Sadul Shahar Kray Vikray Sahakari Samiti is a society registered under Rajasthan Co-operative Societies Act, 1965. The Appellant in that case was serving as a Manager. On attainment of 56 years and completion of service for more than 27 years the administrator of the said society having found that there is continuous fall in his work performance, in public interest, issued the order of Compulsory Retirement. The said order dated 1.4.1988 was challenged by appellant in the revision petition before the Addl. Registrar II, Co-operative Societies, Rajasthan, Jaipur. By order dated 9.5.1996 the revision was allowed. The employer society challenged the decision of the Additional Registrar by way of revision before the State Government under Section 128 of the Act. The Secretary, Co-operative Department, Government of Rajasthan, Jaipur, set aside the order passed by the Additional Registrar having found that the revision before the Additional Registrar was incompetent. That order was challenged by the Appellant under Article 226 of the Constitution before the Single Judge of High Court. The contention was raised that the power of revision under Section 128 of the Act stood exhausted by order of the Additional Registrar and as such the Secretary, could not have exercised the revisional power in respect of the same

order. The learned Single Judge rejected the contention holding that the Additional Registrar had exercised the delegated power of the Registrar and not of the State Government and, therefore, the revision before the State Government was maintainable and the Secretary to said Government had jurisdiction to deal with the matter. In the Letters Patent Appeal before the Division Bench, the appellant contended that once the delegate exercises the power of revision it stands exhausted and such power cannot be exercised again by the original authority and reference was made to certain decisions of Apex Court. The Division Bench of the High Court was of the view that factual position was entirely different. Under Section 128 the Revisional Power can be exercised by two authorities i.e. the Government and the Registrar. In the cases to which the reference was made by the Appellant, there was Single Authority who had delegated the power. It was further noted that under the Act the Revisional Power is vested with two authorities. The Registrar who was the delegator of Power to the Additional Registrar could not have entertained the revision. But there was no embargo on the State Government to entertain the revision application. The Argument before the Apex Court of the Appellant was that the High Court erred in holding that Section 128 of the Act

related to two authorities i.e. the State Government and the Registrar. In fact, the two authorities are interchangeable. If one authority has exercised the revisional power, the other authority logically could not have exercised such power. In any event, second revision was not maintainable. Strong reliance was placed on case Roopchand vs. State of Punjab AIR 1963 SC 1503 for supporting the plea. Per contra respondent submitted that the said State Government was competent to entertain the revision application as the Registrar was one of the two authorities indicated in Section 128 to exercise Revisional Power. The impugned orders of the learned Single Judge and of Division Bench of the High Court did not suffer from any infirmity to warrant any interference. The Apex Court considering the meaning of the word delegate from the various dictionaries and English cases, has found that these principles have no application to the facts of the present case. The Appellate Court has further found that it was in reality not revision by a delegator. The State Government had nowhere delegated the revisional power to Additional Registrar. This was scrutinized by the Apex Court to find out whether the powers exercised by the Addl. Registrar No.II Co-operative Societies, Rajasthan were the powers delegated by the State Government and on facts it was

found that the powers of the State Government under Section 128 were not delegated to the Additional Registrar and therefore ultimately, it appears that the ratio of Roopchand vs. State of Punjab AIR 1963 SC 1503 was not applied and followed by the Apex Court. Thereafter the Apex Court has reproduced Section 128 of Rajasthan Co-operative Societies Act. We also propose to reproduce the said Section so as to have a comparison of the said Section with 257 of Maharashtra Land Revenue Code.

> "**128. Power of the Government and Registrar to call for proceeding of subordinate officers and to pass orders thereon :-**
>
> (1) The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter, of any officer subordinate to them, except those referred to in section 125, for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government or the Registrar, that any decision or order or proceeding so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he thinks just:
>
> . Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to

> which the application relates was communicated to the applicant;
>
> . Provided further that the Registrar shall not exercise the powers under this section in case in which an appeal lies to him under this Act.
>
> . Explanation:- For the purpose of this sub-section, the Asisstant Registrar, Deputy Registrar and Joint Registrar exercising all or any of the powers of the Registrar under this Act shall be deeded to be subordinate to the Registrar.
>
> (2) Pending the hearing under sub-section (1), the Government or the Registrar may pass such interlocutory order as it or he thinks fit to prevent the ends of justice from being defeated."

After having concluded the section the Apex Court has also considered Chapter XIII which deals with appeal, revision and review and has considered Section 124 in the said judgment. In sub-section (1) of Section 124 various orders of the Registrar from which the appeal has been provided have been stated in Clause A to M. Sub-section (2) of the said section is relevant for our purpose since the Apex Court have given emphasis on that part, so as to find out as to whether State Government and Registrar are equal in rank. Therefore, we reproduce sub section (2) of Section 124 of said Act here, it reads as under :

"**124. Appeals to other authorities:-**

(1) Being irrelevant not reproduced.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of the decision or order-

(a) if the decision or order was made by the Registrar, to the Government; or

(b) if the decision or order was made by any other person, or a co-operative society, to the Registrar

Explanation-For the purpose of this sub-section, Registrar shall not include any other person except Additional Registrar.

(3) No appeal shall lie under this section from any decision or order made in appeal."

11. Thereafter in para 20 the Apex Court has laid down the test to ascertain whether the second revision is possible, whenever there is concurrent revisional jurisdiction.

. The Apex Court has observed that sub-section (2) of Section 124 provides that if the decision or order is made by the Registrar, appeal lies to the Government, and if the decision or order is made by any other person or "Co-operative Society" the appeal lies

to the Registrar. Therefore under Chapter XIII the clear distinction is made between the State Government and the Registrar. The test is whether the two authorities with the concurrent revisional jurisdiction are equal in rank. It is therefore not correct as contended by the learned Counsel for the Appellant that the two authorities i.e. the State Government and the Registrar are interchangeable. The power of the Registrar in terms of Section 128 excludes the matters which are covered by Section 125 i.e. "Revision by the Tribunal." (Underlineing is ours). Thus, on proper analysis of the Apex Court Judgment we find that when conjunction "And" has been used so as to confer concurrent revisional powers on State Government and the Registrar, the Apex Court has tried to analyse as to whether the Registrar is in all respect equivalent to the State Government so that it can be said that both the authorities are interchangeable. If one of the authorities having concurrent revisional powers and jurisdiction is not equal in rank with that of Government, the second revision as against the order of the said authority which is lower in rank shall lie before the State Government. In order to find out as to whether both the authorities are equal in rank the Apex Court has scrutinized the respective powers of both the authorities as has been done in para 19 and 20

of the said judgment. This test laid down by the Apex Court shall have to be kept in our mind while analysing the provisions of Maharashtra Land Revenue Code so as to find out whether more than one revisions are possible or not.

13. After having made reference to Apex Court judgment we would like to make reference to case **Parmeshwar Shiroratan Bohara vs. State of Maharashtra & Anr. reported in 1997 (2) MLJ 252.** This reference is being made because one of us (S.B.Mhase, J.) is party to the said judgment and the said judgment is Division Bench Judgment of this Court. Wherein Division Bench has held that Second Revision is permissible under the scheme of Clause 24 of Maharashtra Scheduled Commodities (Regulation & Distribution) Order 1975. The arguments advanced in that case was to the effect that under law the second revision is not tenable and therefore the order at Annexure I is infirm as the same has been rendered without jurisdiction. In that case also the reliance was placed on AIR 1987 S.C.2003, AIR 1993, SC 1616 and AIR 1987. SC 2003 to support the contention that the second revision is not maintainable under Clause 24 of the said order. The said clause 24 is as follows:

"24. Power to call for and examine records of proceedings and revise orders- If any person is aggrieved by an order passed by the Collector, the Commissioner, and if any person is aggrieved by an order passed by the Commissioner, the State Government, may, of an application made to him, or it by the aggrieved person, within 30 days from the date of receipt of such order, stay the enforcement of such order. The Commissioner or the State Government, as the case may be, may also call for and examine the record of any inquiry or proceedings of the concerned officer exercising or failing to exercise the powers under this Order to add, to amend, vary, suspend or cancel any authorisation issued or deemed to be issued under Clause 3 or any supply card issued or deemed to be issued under Clause 6 or to forfeit the deposit for any part deemed thereof paid or deemed to be paid by fair price shop or authorised agent as security or to take any other action under the provisions prescribed by or under this order, for the purpose of satisfying himself or itself as to the legality or propriety of the order passed by such officer and as to the regularity of the proceedings of such officer and may pass such order thereon as he or it, as the case may be, thinks fit:

Provided that State Government may at any time, during the pendency of any enquiry or proceedings or within one year from the date of any order passed by any Officer under the provisions prescribed by or under this Order, suo moto stay any pending enquiry or proceedings or the enforcement of such order if considered necessary and may call for and examine the record of any such inquiry or proceedings, and pass such order thereon as it thinks fit.

Provided further that the Commissioner or the State Government, as the case may be shall not pass any order under this clause, which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

. After having considered said provisions the Division Bench has held that the plain reading of the said clause shows that if the person is aggrieved by the order passed by the Collector, revision will lie before the Commissioner and if one is aggrieved by the order passed by the Commissioner the revision will lie before the State Government. We refer this case at this juncture only to impress the fact that there cannot be any universal rule that the second revision is not maintainable or tenable. Each case is required to be considered taking into consideration the statutory provisions which provide for appeal, revision and review and thereafter the decision will have to be arrived at.

14. Chapter XIII of the Land Revenue Code deals with the appeals, revision and review. Section 247 deals with appeal and appellate authorities. Section 248 deals with the appeal to the State Government while Section 249 provides for an appeal against the order passed in review and revision. Section 250 lays down the period of limitation to file the appeal. Section 251 is the provision for entertaining the appeal after period of limitation. Section 252 provides that the appeal shall not lie as against certain orders.

Section 255 speaks about the power of Stay while the proceeding is pending in appeal. Section 257 is power of State Government and certain revenue and survey officers to call for and examine the record and proceedings of subordinate officers. Section 258 provides for review of orders and Section 259 is provision to prefer revision before the State Government whenever the orders have been made final and conclusive under the provisions of the Land Reference Code.

15. The land Revenue Code provides for three types of enquiries as provided under Chapter XII. Section 234 prescribes mode of taking evidence in formal enquiry and Section 235 states that every decision after formal enquiry shall be in writing, signed by the officer passing the same and shall contain the full statement of the grounds on which order is passed. Section 236 provides for the procedure for summary inquiries and the manner in which the decision shall be given. Section 238 prescribes for ordinary inquiries that means the inquiries which are not contemplated by this Code as formal or summary inquiries and/or where the revenue or survey officers find it fit to make the inquiry in execution of his lawful duties. Such an inquiry shall be conducted as per the rules either

general or special as may be prescribed by the State Government. The order passed by the Revenue Officers under these three types of inquiries are generally appealable under Section 247. Section 247 is as follows:

Sec.247. Appeal and Appellate Authorities

(1) In the absence of any express provisions of this Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of the Schedule whether or not such decision or order may itself have been passed on appeal from the decision of order of the officer specified in column 1 of the said Schedule.

Provided that, in no case the number of appeals shall exceed two.

(2) When on account of promotion or change of designation, an appeal against any decision or order lies under this section to the same officer who has passed the decision or order appealed against the appeal should lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code.

Schedule E is as follows:

REVENUE OFFICER	APPELLATE AUTHORITY
1. All Officers in	Sub-Divisional Officer or

Sub-Division subordinate to the Sub-Division Officer.	such Assistant or Deputy Collector as may be specified by the Collector in this behalf.
2. Sub-Divisional Officer, Assistant/Deputy Collector.	Collector or such Assistant or Deputy Collector who may be invested with powers of the Collector by the State Government in this behalf.
3. Collector (including the Collector of Bombay) or Assistant/Deputy Collector invested with the appellate power of the Collector.	Divisional Commissioner
4. A person exercising powers conferred by Section (15)	Such officer as may be specified by the State Government in this behalf.

SURVEY OFFICER	**APPELLATE AUTHORITY**
1. District Inspector of Land Records, Survey Tahsildar and such Officers not above the rank of District Inspector of Land Records.	Superintendent of Land Records or Officers of equal ranks as may be specified by the State Government in this behalf.
2. Superintendent of Land Records and other officers of equal ranks.	Director of Land Records or the Deputy Director of Land Records, who may be invested with the powers of Director of Land Records by the State in this behalf.
3. Settlement Officer	Settlement Commissioner.

On perusal of these provisions it is revealed that as against the orders passed by the Revenue Officer in Sub-division, subordinate to such Sub-Divisional

Officer, the appeal shall lie before the Sub-Divisional Officer or such Assistant or Deputy Collector as may be specified by the Collector in this behalf. Whenever the order is passed by the Sub-Divisional Officer, Assistant /Deputy Collector, the appeal shall lie to the Collector or such Assistant or Deputy Collector as may be invested with the powers of the Collector by the State Government in this behalf. And when the orders are passed by the Collector or the Assistant/Deputy Collector invested with the Appellate Powers of the Collector, the appeal shall lie to the Divisional Commissioner and in respect of the persons to whom the powers have been conferred by the State Government under Section 15 of the Code the appeal shall lie to such Officer as may be specified by the State Government. This arrangement is in respect of the appeals under Section 247 on Revenue side. When the matter pertains to the Survey Department, the orders passed by the District Inspector of the Land Records/ Survey Tahsildar and such Officers not above the rank of District Inspector of Land Records, can be challenged by filing an appeal before the Superintendent of Land Records or Officers of equal rank as may be specified by the State Government in this behalf. If the orders are passed by the Superintendent of Land Records and other officers of equal rank, the appeal shall lie to the Director of Land Records or Deputy Director of Land

Records who may be invested with the powers of Director of Land Records by the State Government in this behalf, and if the order has been passed by the Settlement Officer the appeal shall lie to Settlement Commissioner. Thus, on going through Schedule E it may appear that there can be three appeals as against the orders passed by the Officer in the Sub Division. However, the proviso to Section 247 has made it clear that in no case the number of appeal shall exceed two. Therefore, the combined reading of Section 247 and Schedule E is that the appeals as provided in Section 247 r/w.Schedule E can be preferred subject to limitation that there shall be only two appeals. It is further clear from Section 247 and Schedule E that the Appellate Authorities have been provided upto Divisional Commissioner or Settlement Commissioner and there is no further appeal provided to State Government. Section 248 is a separate provision providing for the appeal to the State Government and as per the said Section the appeal shall lie to the State Government, from any decision or order passed by the Commissioner or by Settlement Commissioner or by Director of Land Records or by Deputy Director of Land Records invested with the powers of Director of Land Records, except in the case of any decision or order passed by such officer on appeal from the decision or order itself recorded in appeal by any officer

subordinate to him. Thus, Section 248 makes it clear that whenever the order is passed by the Commissioner or Settlement Commissioner or by Director of Land Records or by Deputy Director of Land Records invested with the powers of Director of Land Records in their original jurisdiction and power the appeal shall li to the State Government. Therefore, the combined reading of Section 247 and 248 is that there shall not be an appeal as against the order passed by the Additional Commissioner or by the Settlement Commissioner or by Director of Land Records or by Deputy Director of Land Records invested with powers of Director of Land Records whenever they have passed the order/s in exercise of their appellate authority under Section 247. It is clarified, looking to the scheme of Schedule E under section 247, that in any contingency and circumstances the two appeals, if any, are exhausted by any party at the stage of Revenue Commissioner and/or Settlement Commissioner. Therefore the appeals under Section 248 shall lie whenever the order is first time passed by the Commissioner or by Settlement Commissioner etc as provided in the said section. However, the important effect of Section 248 is that the orders passed by the Commissioner or by the Settlement Commissioner are appealable to the State Government and thereby these authorities have been made subordinate to the State Government and thereby the

State Government and these Officers are not equal in rank.

16. It is important to note at this stage that right of party to prefer appeal against orders passed by Revenue Officer is not linked up with the nature of inquiry in which the order impugned is passed. That means the appeals as provided under Section 247, 248 are available to party irrespective of nature of enquiry whether it is ordinary, summary or formal as provided in Chapter XII of Land Revenue Code. It is to be noted that all the appellate authorities have power to entertain appeals as against orders passed by subordinate revenue officer irrespective of the nature of inquiry from which said order has arisen.

17. Section 257 is Power of State Government and Certain Revenue or Survey Officers to call for and examine the record and proceedings of Subordinate Officers and this section is the main section which requires interpretation in this LPA. The said section is as follows:

> "**257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers:-**

(1) The State Government and any revenue or survey Officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceeding of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

(2) A Tahsildar, a Naib-Tahsildar, and a District Inspector of Land Records may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section(1) or subsection (2) that any decision or order or proceedings so-called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit:

Provided that, the State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order:

Provided further that, an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit."

18. On going through this Section it is clear that

it deals with the revisional powers of the State Government and certain Revenue or Survey officers correlating said power with nature of inquiries as has been dealt with in Chapter XII of Land Revenue Code. At this stage, after going through this Section the following analysis follows. In sub-section (2) Tahsildar, Naib Tahsildar and District Inspector of Land Records have been invested with the power of revision to examine the proceeding of any officer subordinate to them in any matter in which neither the formal nor summary enquiry has been held. In short, the power is given to the Tahsildar, Naib Tahsildar, District Inspector of Land Records to take in revision the orders passed in ordinary enquiry by their subordinate revenue officers. However, power of the State Government and Revenue or Survey Officer, not inferior in rank to the Assistant or Deputy Collector or Superintendent of Land Records to revise the orders passed in ordinary inquiry. Since it is not in a formal nor a summary inquiry; However, the State Government and Revenue or Survey Officer not in inferior rank to the Assistant/ Deputy Collector or Superintendent of Land Record, in their respective departments can exercise revisional powers in respect of all types of inquiries and orders passed therein namely formal inquiry, summary inquiry and ordinary inquiry. However, it is to be noted that even

though the Assistant or Deputy Collector has been invested with power to call for and examine the record of any proceeding and order under sub-section 1 of section 257, they do not have any power to modify, annul or reverse the decision or proceeding when they are dealing with the order or proceeding in which a formal inquiry has been conducted and in such case/s, if they want to modify, annul or reverse the order/s or proceeding, they have to submit the record with their opinion to the Collector who shall pass such order thereon as Collector thinks fit. Therefore, the combined reading of sub-section (1) and sub section (3) second proviso is that the Assistant or Deputy Collector can exercise the powers of revision and can take the final decision either modifying, annulling or reversing the orders under revision only if order under revision has been passed by subordinate officer in an enquiry which is summary inquiry and/or ordinary inquiry. If it is found by Assistant/Deputy Collector that order under revision is passed by subordinate revenue officer in a formal inquiry and revision requires to be allowed partly or wholly either modifying or reversing the order then these officers have to submit the record and their opinion to the Collector and the Collector shall take the decision as he deems fit. Therefore, ultimate result is that the State Government and the Revenue

Officers from the rank of Collector and above, which includes Commissioner, Additional Commissioner can exercise powers of revision in respect of all types of inquiries provided under Land Revenue Code and can dismiss and/or allow partly or wholly either modifying, varying, annulling or reversing the order under revision. In respect of summary inquiry and ordinary inquiries the Assistant or Deputy Collector can exercise the powers of revision and take an appropriate decision as provided under sub section 3. The Tahsildar, Naib Tahsildar and District Inspector of Land Records can exercise the revisional powers in respect of the proceedings of any officer subordinate to them in which neither the formal nor a summary inquiry has been conducted, namely whenever there is ordinary inquiry as provided in sub-section (2) (3). If the Assistant or Deputy Collector exercises the power of revision in respect of the inquiry which is formal and if they desire to allow either partly or wholly said submission, then instead of passing the order under sub section 3, they shall submit the report and opinion to the Collector under second proviso of sub section 3 and thereafter the orders shall be passed by the Collector. If the revisional powers are exercised by any authority provided in section 257 but and except the State Government, Authority can pass the following order,

namely

(a) dismiss the revision; or

(b) vary or modify the order under revision; or

(c) annul or reverse the order under revision.

The question arises, what are the remedies of aggrieved party in the above referred circumstance. One of the section which provided a machinery for appeal against the orders passed by the Revenue Officers as demonstrated and considered above, is Section 247 r/w. Schedule E. Section 249 also deals with the contingency provided in the circumstances of (b) and (c) above, namely when the revisional authorities have modified, varied, reversed or annulled the order under revision. Sub section (2) of section 249 provides that order passed in the revision varying or reversing any order shall be appealable as if it were the order passed by the Revisional Authority in appeal. Thus, plain reading of sub section (2) of Section 249 is that it has provided appeal against the orders passed by the Revisional Authority (when said authority is other than State Government) whenever the Revisional Authority has modified or reversed or annulled the order in the revisional powers. However, important clause from sub-section (2) of Section 249, is that the said appeal

lies as if the revisional authority has passed said order in appeal. Thus, whenever the revisional authority under Section 257 except State Government has passed an order, modifying, annulling or reversing the order under revision, reading alongwith Section 249(2) it is to be treated as order passed in appeal in appellate power and thereby the appeal shall lie under Section 249 at first instance and further appeals under Section 247 of the Maharashtra Land Revenue Code can be preferred depending upon at what stage concerned Revenue Officer exercised revisional power, and interfered with so as to prefer appeal under Section 249 (2) of Maharashtra Land Revenue Code. Thus, the final analysis which we come across is that the orders passed by the revenue Officers from the rank of Collector and below in revisional jurisdiction varying or modifying or reversing said order shall be governed by Section 249(2) and 247. However, whenever an order modifying or annulling or reversing the decision of subordinate revenue officer is passed by the Commissioner in revisional jurisdiction under Section 257, the appeal, as against that order can be preferred under Section 249(2) to the Government. Accepting the said principle the Single Bench of this Court at Aurangabad has granted permission to withdraw the Writ Petition No. 5241 of 2001 wherein the order passed by the Additional

Commissioner allowing the revision was challenged with liberty to file appeal as against the said order. Thus, it is clear that whenever revisional authority under Section 257(1)(2) interferes with the order under revision by varying, reversing or annulling said order, the Maharashtra Land Revenue Code has provided appeal as against said order. However, said Code has not provided remedy of appeal which the revisional authority under said Section has dismissed revision. On the contrary, Section 252(6) prohibits such appeal. However, the above analysis in respect of powers of the Commissioner under Section 257, 249(2) and 248 leads to one irresistible inference and finding that the Commissioner or any other Revenue or Survey officer are not Officers of equal rank with the State Government. Not only that, all the revisional authorities under Section 257 other than State Government as stated in that section are not in equal in rank, but are subordinate of State Government. Therefore, the finding has to be recorded that whenever the revision is dismissed by the Commissioner or any other Revenue Officer in its revisional power under Section 257 the another revision as against the said order can be preferred before superior Revenue Officer having concurrent revisional power and ultimately with the State Government under Section 257. Even though the powers are concurrent, the

only reason for permitting further revision is that the State Government and other Revenue and Survey Officers who have concurrent power to entertain the revision under Section 257 are not the authorities of equal in rank and therefore they are not interchangeable. Thus, on analysis we find that the test as laid down by the Apex Court in the matter of Ishwarsingh vs. State of Rajasthan referred to above, if applied, the inference follows that the revision as against the order of the Commissioner or Revenue or Survey officer dismissing the revision petition is permissible, and, therefore, we hold that the ratio in the case of Ishwarsingh (supra) squarely covers the interpretation of Section 257 as analysed above.

19. The controversy that the second revision is not tenable under Section 257 of Land Revenue Code appears to have commenced with the judgment of Single Judge of this Court in Writ Petition No.4168 of 1998 delivered on 18.2.1999. In the said matter the impugned order dated 17.6.1998 was passed by Secretary & Officer on Special Duty (Appeals), Government of Maharashtra, Revenue & Forest Department and by the said order two revision applications were disposed of. One revision application was at the instance of Respondent Nos. 1 to 3 in that petition challenging the order of Additional

Commissioner, Pune Division, dated 2.12.1993 and other revision application was filed by the petitioner was directed against the order passed by the Sub Divisional officer on 24.9.1994. The Single Judge has found that the revision filed before Secretary and Officer on Special Duty, Government of Maharashtra by the Respondent Nos.1, 2 and 3 which was directed against the order passed by the Additional Commissioner, Pune on 2.12.1993 was incompetent since it was a second revision, and set aside order passed in that revision. However, having found that the revision filed by the petitioner was as against the order dated 29.9.1994 passed by the Sub-Divisional Officer being the First Revision Application under Section 257 directly preferred to State Government had directed the concerned officer of the State Government to decide the said revision. This aspect of the order was misconstrued by the Single Judge of this Court when the Writ Petition Nos.7477 of 2002, from which this LPA arises was decided. By making reference to Writ Petition No.4168 of 1998 it is observed that

> "In support of the submission, the learned Counsel for the Petitioner sought to put reliance on the unreported judgment in Writ Petition No.4168 of 1998 wherein it was held

> that second revision under the provisions of Section 257 of the Maharashtra Land Revenue Code will not be maintainable, however, it may not be overlooked that, in the same judgment the learned Single Judge has also held that, without going into the merits of the contentions raised by the parties, the interest of justice will be served if the Secretary and the Officer on Special Duty (Appeals) Government of Maharashtra, is directed to decide afresh the revision application filed by the Petitioner, uninfluenced by rejection of revision application filed by the Respondents. In my considered view, there is no reason as to why the ratio of this ruling should not be followed in this case also. This is specially, in view of the fact that the contentions raised on behalf of the petitioner can also be effectively argued and adjudicated by alternate remedy of Civil Suit."

In fact, the above observations will show that the analytical facts under which the Single Judge in that case passed an order directing the Secretary to consider the revision of the petitioner were not taken into consideration by the Single Judge while passing impugned

orders and therefore said judgment was applied in wrong way. The Single Judge has accepted the following observations of Minister for State "On perusal of the impugned order passed by the learned Revenue Minister it is amply clear that he has treated the revision application under Section 257 as appeal under Section 249 of Maharashtra Land Revenue Code and as such, has disposed of it on its merits and in view of this position, I do not think that it is necessary to refer the matter back to the concerned authority". Further, it requires to be stated that by accepting these observations of the Minister for State, the Single Judge of this Court has contributed to endorse confused position of law under which Minister was suffering. In the light of the observations which we have made in respect of section 257 and 249, on minute scrutiny it will be evident that under Section 257 the matter cannot be treated as appeal under Section 249. The Appeal under Section 249 will lie to the Government only if the Commissioner has modified, annulled and or reversed the order of the subordinate Revenue Officer. Otherwise, in case when the Commissioner has rejected the revision in revisional powers the State Government can entertain that revision under Section 257 itself. The observations made by the State Minister for Revenue in its order were made in a confused position because it

was difficult for the Minister for State to come out of the rigours of the ratio of Writ Petition No.4168 of 1998. It further requires to be mentioned that the Minister has made a reference to the order passed by this Court in Writ Petition No.5590 of 1999 dated 21.10.1999. We have gone through that order. The said order is not pertaining to the present parties. That order also does not lay down principle that the second revision is permissible. It appears that the parties in that petition approached to this Court and have withdrawn the revision application and thereafter again presented the revision before the State Government, whereupon the Secretary informed that the parties shall approach to the Supreme Court. That order was challenged before this Court, wherein the Division Bench of this Court directed the Government to entertain the revision and decide it and therefore, the order passed in Writ Petition No.5590 of 1999 was of no use for the State Minister for Revenue to carve out its jurisdiction under 257. Let the fact as it is, though we find that the reasons stated by the State Minister for Revenue to exercise the powers under Land Revenue Code were not found to be correct, yet as per the analysis which we have carried out above, we find that the revision petition was very much maintainable before the State Minister for Revenue in the present matter. The other

matter which has been referred to is the order passed in Original Side Jurisdiction Writ Petition No.2048 of 1999 passed on 9.9.1999. We have perused that order. It appears from that order that the matter is under Section 154 of the Maharashtra Co-operative Societies Act and secondly though it is prima facie observation at admission stage that second revision is not tenable yet the matter has not been finally decided, but the petition is admitted and it is pending for final disposal and therefore this order is not binding on us. A reference is also made to **2000(3) MLJ page 115 in the matter of Ramesh vs. Gopalan, Janata Sahakari Bank** decided by the Single Judge of this Court. It is a case in respect of Section 154 of the Maharashtra Co-operative Societies Act. Thus, what we find that the order passed in Writ Petition No.2084 of 1999 and in 2000(3) MLJ 115 are in respect of the provisions of Section 154 of the Co-operative Societies Act, they are not relevant for our consideration as we are considering the provisions of Maharashtra Land Revenue Code. The judgment and order passed in our judgment of **Sampabba Babappa Teli vs. State of Maharashtra 2003(4) ALL MR 252** is in respect of Section 257 of the Land Revenue Code. However, it appears from the said judgment that the learned Single Judge has based the finding that the second revision is not maintainable in view of the

judgment of Single Bench of this Court in **Writ Petition No.4168 of 1998 and Ramesh T. Gopalani vs. Janata Sahakari Bank Limited & Another,** referred to above and order passed by the Single Bench of this Court in Writ Petition No.2084 of 1999 at the admission stage. Since the two judgments are dealing with the provisions of Co-operative Societies Act, we find they are not relevant for the purpose of interpreting the provisions of Maharashtra Land Revenue Code in view of the discussion above. We have already mentioned to Writ Petition No.4168 of 1998 on other aspect. However, so far as maintainability of second revision is concerned, the following observations from that judgment requires consideration.

> "It would be seen from the operative order that the Secretary and Officer on Special Duty allowed the revision application filed by the present Respondent Nos.1 to 3 and set aside the order passed by the Additional Commissioner dated 2nd December, 1993. The order dated 2nd December, 1993 was passed by the Additional Commissioner in exercise of revisional jurisdiction. Upon the proceedings under Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and

Maintenance) Rules, 1997 having being initiated on the application of petitioner for correction of revenue records, Tahsildar passed the order on 1st January, 1990 in favour of the present Respondent Nos.1 to 3. Aggrieved by the order of Tahsildar, the present Petitioner preferred appeal before the Sub-Divisional Officer which was dismissed on 17.12.1991. Dis-satisfied with the order of the Tahsildar and Sub-Divisional Officer, the present Petitioner preferred Second Appeal before the Collector which was also dismissed on 4th May. 1993. Against the concurrent orders of three revenue authorities, the present petitioner preferred revision application under Section 257 of the Maharshtra Land Revenue Code before the Additional Commissioner who disposed of the revision application on 2.12.1993, set aside the orders passed by the Revenue Authorities below and remanded the matter back to Tahsildar. Against the order dated 2.12.1993 passed by the Additional Commissioner in his capacity as Revisional Authority, no revision lay and therefore, the revision application filed by the present Respondent Nos. 1 to 3 before the Government of Maharashtra under Section 257 of

the Maharashtra Land Revenue Code was not maintainable and could not have been allowed. Mr.P.B.Shah, learned Counsel for the Respondent Nos.1 to 3 could not show that such revision application before the Government was maintainable. Since the revision application filed by the present Respondent Nos. 1 to 8 challenging the order of Additional Commissioner dated 2.12.1993 passed in revision application was incompetent and not maintainable, the present order allowing the said revision application cannot be sustained. The concerned Secretary and Officer on Special Duty (Appeals) had no jurisdiction, competence or authority to set aside the order of Additional Commissioner passed on 2.12.1993. The said order dated 2.12.1993 was passed by the Additional Commissioner in exercise of jurisdiction under Section 257 of Maharashtra Land Revenue Code as delegated by the Government of Maharashtra. The operative order clearly shows that the consequent upon the setting aside the order of 2nd December, 1993, the remaining operative order relating to other order passed by the Sub-Divisional Officer and Tahsildar were passed.

> Since whole approach of Secretary and Officer on Special Duty was erroneous in the light of incompetent revision application filed by the present respondents, impugned order cannot be sustained."

On going through this part of the order of the Single Judge, it appears that the learned Counsel for the Respondents could not show that such revision application before the Government was maintainable and the learned Single Judge was of the view that the second revision is not maintainable and the reasons for holding such view appears to be that according to Single Judge, the Additional Commissioner who exercises the powers under Section 257 of the Maharashtra Land Revenue Code has exercised the said power as delegate of Government of Maharashtra. At this stage an error has been committed by the learned Single Judge. The learned Single Judge lost sight of the fact that the additional Commissioner who exercises the power of revision under Section 257 exercises the said power not as a delegatee of the Government of Maharashtra but the said revisional power of the Commissioner flows directly from statutory provisions of Section 257 of the Maharashtra Land Revenue Code. Had it been a case that the Revisional

Powers possessed by State Government under Section 257 are being delegated to the Commissioner by order or notification then the learned Single Judge would have been right in holding that the second revision before the State Government is not tenable in view of the ratio of the Apex Court in the matter of Roopchand vs. State of Punjab reported in AIR 1963 SC page 1503 wherein the Supreme Court has considered the case when the revisional powers of the Government were delegated to the subordinate Officer by the Government of Punjab under the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. However, whenever the revisional powers of the Government are delegated to the Subordinate Officers then in that circumstances, as those powers are exercised by that Officers as State Government, the second revision before the State Government may not be permissible in view of the said Judgment of the Apex Court. However, it requires to be mentioned that in the case of Ishwarsingh Vs. State of Rajsathan referred to above and upon which we are relying, the Apex Court has considered this aspect in para 14. It has been specifically observed by Apex Court that the principles applicable in case of delegates are not applicable in the facts of that case also since in reality there was no revision by the delegator. The State Government had

nowhere delegated the revisional power to the Additional Registrar in that case. In the present matter also the power of the Commissioner flows from Section 257 and it is not the delegated power of Government under Section 257 to the Commissioner and therefore what we find is that, that the reasoning of the single Judge in Writ Petition No.4168 of 1998 appears to be based on fact that the Commissioner while exercising the power under Section 257 has exercised the delegated power of the Government of Maharashtra. However, that was incorrect. Since the basis of the reasoning was incorrect the ratio and the view taken by the single judge is to be declared as incorrect view of law on this point.

20. However, the matter does not rest here because the order of the Single Judge in Writ Petition No.4168 of 1998 was taken in Letters Patent Appeal No.349 of 2000 and the said LPA was rejected at admission stage itself. Thus, we find that even though there is Division Bench order agreeing with the Single Judge, yet there is no judgment passed by the Division Bench declaring that the second revision is not tenable. The orders passed at admission stage cannot be said to be a binding precedent. Further, we are of the view that the order passed by the Division Bench and also of the Single Judge referred to above have been impliedly over

ruled by the test laid down by the Apex Court in the matter of Ishwarsingh v.s State of Rajasthan and others referred to above and therefore we find that the reference to larger bench is not necessary. We find that the decision in Writ Petition 4168 of 1998 and in the matter of Sambappa Babappa Teli vs. State of Maharashtra reported in 2003(4) All Mr 252 is no a good law. We record our finding that under Section 257 of the Maharashtra Land Revenue Code more than one revision is possible. Now coming to the facts of the present case, the mutation Entry No.1836 was in fact certified. However, the Sub-Divisional Officer has taken the said mutation in revision in RTS Revision No.14 of 1984 and has set aside the mutation by order dated 30.7.1985. There was appeal as against that order which was remanded. It was again decided by the Sub Divisional Officer on 29.10.1987 and the said mutation was set aside. There was RTS Appeal No.128 of 1987 which was decided on 13.7.1993. In view of these orders the mutation entry No.1836 was cancelled and Mutation Entry No.2176 was effected whereby the name of the Collector and the Deputy Collector of the Evacuee Property was entered into 7 X 12 extracts. It is further found that when the orders of the Collector directing to put the petitioner into possession were not obeyed by the subordinate Revenue Officers and the Revenue Officers

effected the mutation entry No.2377 in favour of the Respondent Nos.3 Gulabai Desai and Mutation Entry No.2394 in favour of the Respondent No.5 Genu Kadu and thereafter for second time the special Divisional Officer, Maval, has exercised the revisional powers under Section 257 and initiated proceeding RTS Revision 12 of 1999 in respect of the mutation entry No.2377 and 2394. The RTS Revision 12/99 was allowed on 28.1.2000 as against that two RTS appeals namely, RTS Appeal No.81 of 2000 and RTS Appeal No.114 of 2000 were preferred by the Respondent. They were decided on 28.5.2001. As against that the RTS Revision No.330 of 2001 was preferred. The same was dismissed. As against that the RTS proceeding bearing No.3402 /Pra.Kra.309/L-6 was preferred before the Minister for State. All these proceedings will show that twice the Sub-Divisional Officer has exercised the revisional power under Section 257 at the directions of the Collector, namely the RTS Revision No.14 of 1984 and RTS Revision No.12 of 1999. It will further reveal that the appeals as against the RTS Revision No.14 of 1984 was preferred by the parties in view of the provisions of Section 247 and 249 sub-section 2. It will equally appear that when the orders were passed in Revision Application No.12 of 1999 before the Sub Divisional Officer in exercise of the powers under Section 257 the parties have preferred two

RTS appeals in view of the provisions of Section 247 and 249 sub-section 2. Not only that, thereafter the RTS Revision Application No.330 of 2001 was also preferred before the Commissioner and if the view is taken that the second revision is not tenable then in that circumstances since the first order passed in RTS Revision No.12 of 1999 is a revisional order, this second revision before the Commissioner being RTS Revision No.330 of 2001 would not have been tenable. However, said revision RTS 330 of 2001 is tenable since the appeals as provided under Section 247 and 249 intervene in between the revisional orders passed by the Sub-Divisional officer and the Commissioner. Thus, in short, we find that the scheme under Maharashtra Land Revenue Code is quite different scheme and it permits more than one revision. Thus, viewed from any angle, we find that the State Minister for Revenue when he entertained the matter, State Minister for revenue was possessed of jurisdiction under Section 257 of the Maharashtra Land Revenue Code and therefore the order passed by him under the said authority is within his jurisdiction, power and competence. The argument advanced by the learned Counsel for the Petitioner is therefore hereby rejected. In view of this, the Letters Patent Appeal is hereby dismissed.

(S.R.Sathe, J.) (S.B.Mhase, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.84 OF 2003
IN
LETTERS PATENT APPEAL NO.55 OF 2003
AGAINST
WRIT PETITION NO.7477 OF 2002

Gurudassing Nawoosing Panjwani
..Applicant

Versus

1. The State of Maharashtra
& Others
..Respondents

Mr.P.K.Dhakephalkar i/b.Shri A.S.Rao for the applicant

Mr.Anil V. Anturkar for the respondent No.2

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

P.C.

. In view of the disposal of Letters Patent Appeal No.55 of 2003, this Civil Application does not survive. Hence disposed of accordingly.

(S.R.Sathe, J.) (S.B.Mhase, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.57 OF 2004
IN
LETTERS PATENT APPEAL NO.55 OF 2003
AGAINST
WRIT PETITION NO.7477 OF 2002

Gurudassing Nawoosing Panjwani
..Appellant

Versus

1. The State of Maharashtra
& Others
..Respondents

And
Anand Prabhakar Gokarn
& Other ..Applicants

Mr.P.K.Dhakephalkar i/b.Shri A.S.Rao for the applicant

Mr.Anil V. Anturkar for the respondent No.2

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

P.C.

. In view of the disposal of Letters Patent Appeal No.55 of 2003, this Civil Application does not survive. Hence disposed of accordingly.

(S.R.Sathe, J.) (S.B.Mhase, J.)